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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 297

GRAHAM-WHITE SALES CORPORATION, a foreign corporation, and D. ALLCOTT KELLY, as President of Graham-White Sales Corporation,

Appellants,

vs.

THE PRIME MANUFACTURING COMPANY, a corporation,

Appellee.

On Appeal from the Supreme Court of the State of Wisconsin

JURISDICTIONAL STATEMENT AND APPENDIX

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of the State of Wisconsin entered on February 4, 1958, affirming an Order of the Circuit Court for Milwaukee County, Wisconsin, rehearing denied on April 8, 1958, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Wisconsin Supreme Court is reported in 3 Wis. (2d) 156, 87 N.W. (2d) 788. The opinion of the Circuit Court for Milwaukee County was not reported. Copies of both opinions and the judgment of the Wisconsin Supreme Court are attached hereto as Appendix A.

JURISDICTION

The Circuit Court entered an Order denying the motion of Appellants to set aside and quash service effected by the delivery of a copy of the summons to D. Allcott Kelly, as President of Graham-White Sales Corporation, in so far as such delivery purported to confer jurisdiction upon said Court over Graham-White Sales Corporation. The Wisconsin Supreme Court on appeal entered judgment on February 4, 1958, affirming said Order. Appellants filed a timely motion for rehearing which was denied on April 8, 1958. Notice of Appeal herein was filed in the Wisconsin Supreme Court on June 26, 1958.

The jurisdiction of the Supreme Court of the United States to review the judgment by direct appeal is conferred by Title 28, United States Code, §1257 (2), in that the Wisconsin Supreme Court decided in favor of the validity of Wisconsin Statute 262.09 (4) (a) as applied to the particular facts involved and rejected the contention that such application would make the statute void under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal under such circumstances. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282; *Jamison v. Texas*, 318 U. S. 413; *Poulos v. New Hampshire*, 345 U. S. 395.

STATUTE INVOLVED

Wis. Stat. 262.09 (4) is the only statute involved on this appeal. The statute is printed in 2 Wisconsin Statutes of 1957 and reads:

> "If the defendant is a foreign corporation (including one created by or under any act of Congress) and (a) is doing business in Wisconsin at the time of service, or (b) the cause of action against it arose out of the doing of business in Wisconsin, service may be made in accordance with the provisions of s. 180.825 or by delivering within or without the state a copy of the summons to any officer, director or managing agent of the corporation."

The constitutionality of part (b) of the statute is not involved. The record contains no finding that any cause of action arose out of the doing of business in Wisconsin because no complaint even purporting to allege a cause of action was or ever has been served.

QUESTION PRESENTED

Does Wisconsin Statute 262.09 (4) (a) violate the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States when applied to delivery of a copy of the summons at a time when all activity of the foreign corporation in Wisconsin of any character had ceased except (a) a rental obligation under a written lease of space in an office building and (b) ownership of some office furniture continued, and (c) a telephone answering service referred all business callers to the corporate office in Salem, Virginia?

STATEMENT OF CASE

D. Allcott Kelly (hereinafter referred to as "Kelly") is a resident of Milwaukee, Wisconsin. Graham-White Sales Corporation of Salem, Virginia, a Virginia corporation (hereinafter referred to as "Sales Corporation") was organized in August of 1956 (R. pp. 43, 79) for the purpose of selling equipment manufactured by another company. Kelly is President and director of the Sales Corporation. (R. p. 48)

The summons was delivered to Kelly, as President of the Sales Corporation, on May 24 and June 3, 1957.

Kelly terminated his employment with appellee on March 15, 1957, (R. pp. 77, 81) and commenced giving his full time to the business of the Sales Corporation. (R. p. 81) Exclusive of Kelly, Miss Peplowski, Kelly's secretary when he worked for appellee, was the only employee of the Sales Corporation in or for Wisconsin. (R. p. 83)

The Sales Corporation intended to establish a district sales office in Wisconsin. (R. pp. 43-44) The Sales Corporation, by Kelly as President, and Kelly, individually, leased for three years two rooms in an office building in Milwaukee, Wisconsin, to commence October 1, 1956. (R. p. 14) There was no activity in the office until after January 1, 1957, (R. p. 96) except perhaps the installation of some office furniture. (R. p. 97) In January of 1957 a request was made for installation of a telephone in the leased premises and for listing of the Sales Corporation in the Milwaukee telephone directory to be published in April of 1957. (R. p. 85) Telephone service actually was initiated February 1, 1957. (R. p. 86)

The Sales Corporation undertook preliminary and preparatory work on sales literature (R. p. 44) and sent to

the trade on March 24 (R. p. 55) an advertising "flyer" which indicated the leased premises in Milwaukee as an office to which *inquiries* were to be directed. (Exhibit F. R. p. 165) The trade also was advised by letter under date of March 25, 1957, from Milwaukee, Wisconsin, to address all *orders* to the Graham-White Sales Corporation, Salem, Virginia. (R. pp. 59-60) Appellee's officers allege an order solicited by Kelly in LaGrange, Illinois, resulted in a shipment by the Sales Corporation to an Illinois customer on March 19, 1957. (R. pp. 17-18)

There was considerable use of the Milwaukee telephone the latter part of March (R. pp. 89, 100) and during the month of April, (R. pp. 89-92, 100) and even extending into May. (R. p. 100) However, after May 15, 1957, all business transactions of the Sales Corporation in Wisconsin had terminated (R. pp. 44-45), i.e., ceased prior to the delivery of the copy of the summons to Kelly on May 24, 1957. One of the appellee's officers in an affidavit merely stated that Kelly and Miss Peplowski were physically in the Milwaukee office on Sunday, May 26, 1957. (R. p. 50) Liability for payment of rent continued under the office lease (R. pp. 44, 97) and the office furniture was still in the leased premises. (R. p. 97) Because the telephone listing directed callers to contact the Kelly residence in event of no answer from the office telephone (R. p. 86), on April 22, 1957 a telephone answering service was employed (R. p. 94) which advised all telephone callers to contact the Sales Corporation at its office in Salem, Virginia, (R. p. 45) and after May 15, 1957 the postal authorities forwarded all mail addressed to the Sales Corporation in Milwaukee to its office in Salem, Virginia. (R. pp. 44-45)

In the State of Wisconsin any challenge by a foreign corporation to delivery of a summons on the basis that the

foreign corporation was not "doing business in Wisconsin" as required by §262.09 (4) necessarily draws in question the validity of the statute on the ground of its being repugnant to the Constitution of the United States if applied to the challenging corporation.

The Wisconsin Supreme Court so held in the instant case:

> "The question is whether at the time of the service of the summons in this action on D. Allcott Kelly, as president of the Graham-White Sales Corporation—May 24, 1957 or June 3, 1957—the corporation was doing business [under §262.09 (4)] in Wisconsin.
>
> In the recent case of *Behling v. Wisconsin Hydro Electric Co.* (1957), 275 Wis. 569, 572, 573, 575, — N.W. (2d) —, this court, stating that 'Questions of jurisdiction acquired by the service of process on a foreign corporation depend upon whether or not there has been compliance with the due process provision of the federal constitution,' regarded as controlling *International Shoe Co. v. Washington* (1945), 326 U.S. 310,
>
> * * *
>
> The facts in this case do not warrant any suggestion of 'unfair play'." (See Appendix A, pp. 15-6, R. pp. 171-172).

And in the more recent case of *Huck v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 4 Wis. 2d 132, 133, 90 N.W. 2d 154, 156 (1958) an interpleaded defendant also moved to quash service on the ground that it "* * * was not 'doing business in Wisconsin' at the time of such service within the meaning of the statute." Such challenge drew in question the validity of §262.09 (4) under the United States Constitution, the Court stating *inter alia* at pages 135-141:

"As will be developed later in this opinion, we are satisfied that a holding by this court, that such business activities carried on in Wisconsin constitute the 'doing of business' within the state within the meaning of sec. 262.09 (4), Stat., *does not offend* either the commerce clause of the United States constitution or the *due process requirement of the Fourteenth amendment.*

* * *

We have no hesitancy in holding that the objective of the statute was to give citizens of Wisconsin the right to make use of the courts of this state in instituting causes of action against any foreign corporation, which actually is carrying on business activities within the state, *subject only to such limitations as are imposed by the United States constitution.*

* * *

We will now consider the question of whether courts of a state can assert jurisdiction over a foreign corporation whose only activities in such state consist of solicitation of business, and the maintaining of an office to facilitate such solicitation, *without violating the United States Constitution.*

* * *

It is our considered judgment that the solicitation activities of Rock Island in this state were of such substantial and extensive nature as to constitute the doing of business within the state under the provisions of sec. 262.09 (4), Stats., and we so hold." (Italics supplied)

Unlike many other jurisdictions, the Wisconsin statute is coextensive with federal due process, and any decision of a Wisconsin court holding that a foreign corporation "is doing business in Wisconsin at the time of service" as required under §262.09 (4) (a) *necessarily* draws in question the validity of the statute under federal due

process and decides in favor of its validity. Thus the judgment of the Wisconsin Supreme Court in the instant case is directly appealable under Title 28 USC §1257 (2).

Nevertheless, appellants had certified as part of the record the briefs on appeal to the Wisconsin Supreme Court. These briefs disclose that appellants did expressly contend that §262.09 (4) (a) would be void under federal law if applied by the court to the particular facts involved. (R. pp. 29, 157, 180.) In view of *Memphis Gas Co. v. Beeler,* 315 U.S. 649, 651, it also is advisable to again emphasize that the Wisconsin Supreme Court passed upon and decided the issue arising under the United States Constitution to the extent required for this direct appeal under Title 28 USC §1257 (2) and Rule 15-1 (d) of this Court. (See Appendix A, p. 16, R. p. 172).

THE QUESTION IS SUBSTANTIAL

The foregoing demonstrates that the nature of the instant case and the ruling of the Wisconsin Supreme Court applying §262.09 (4) (a) to the particular facts involved is such as to bring the case within Title 28 USC §1257 (2) as construed by this court in *Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. 282, and other cases cited above under the heading of "Jurisdiction".

We also submit that the question presented by this appeal is substantial.

This court in *International Shoe Co. v. Washington,* 326 U.S. 310 redefined the basis of state judicial power over foreign corporations and announced the "minimum contacts—fair play" basis for testing state jurisdiction. From the facts, however, it is evident that the precise,

actual jurisdictional question decided was that such jurisdiction exists under the newly defined basis where (1) a foreign corporation's continuous solicitation activities in a state produced a substantial volume of business in the state, and (2) the cause of action sought to be enforced arose out of such activities.

In the recent case of *McGee v. International Life Ins.* Co., 355 U.S. 220, 223, this Court again emphasized the fact that the suit *was based* on a contract which had a substantial connection (contact) with the State of California. This decision and *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445-448 clearly indicate that traditional notions of fair play and substantial justice require more substantial contacts with a state in suits based upon causes of action not arising out of the foreign corporation's activities within the state. The instant case falls within such category of cases since the Wisconsin courts did not and could not find on the basis of this record that appellee's cause of action arose out of contacts in Wisconsin.

Because of the absence of such finding, coupled with the failure of the record to disclose anything inconsistent with the contention that the Sales Corporation had ceased doing business in Wisconsin before delivery of the summons to Kelly, if any such business activity ever occurred, the decision of the Wisconsin Supreme Court in the instant case violates *traditional* notions of fair play and substantial justice.

State courts, and especially the Wisconsin Supreme Court, have been prone to uphold service of process upon a foreign corporation. Federal due process, however, prescribes a minimum standard. There is a point below which state courts cannot go even under the broad "minimum contacts—fair play" rule. The Wisconsin Supreme

Court journeyed well beyond such point and any other known judicial decision in its written opinion filed on February 4, 1958 in this case.

We submit that the question presented by this appeal is so substantial as to require briefs on the merits and oral argument for its resolution. A determination of such question by this Court undoubtedly will erase much of the difficulty encountered by the bench and bar in this field of law regardless of the ultimate decision reached on this particular appeal.

Respectfully submitted,

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APPENDIX A

JUDGMENT APPEALED FROM

On the 4th day of February, A.D. 1958, the same being the 42nd day of said term, the judgment of this Court was rendered in words and figures following, that is to say:

The Prime Manufacturing Company, a corporation,
Respondent,

v.

D. Allcott Kelly and Graham-White Sales Corporation, a foreign corporation,
Appellants,

Lilian B. Kelly, Virgil L. Frantz, Sr., Stella Peplowski, and Virgil L. Frantz, Sr. and Betty F. Roberts, Co-partners doing business as Graham-White Manufacturing Company, and Betty F. Roberts,
Defendants.

Milwaukee Circuit Court.

Opinion by Chief Justice Martin.

This cause came on to be heard on appeal from the order of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court, that the order of the Circuit Court of Milwaukee County, appealed from in this cause, be, and the same is hereby, affirmed.

OPINION OF WISCONSIN SUPREME COURT

(Caption omitted)

Appeal from an order of the circuit court for Milwaukee county: Myron L. Gordon, Circuit Judge. *Affirmed.*

Action commenced by plaintiff Prime Manufacturing Company against defendants D. Allcott Kelly, Graham-White Sales Corporation and others, by service of a summons and discovery pleadings on Kelly, as an individual, as president of the Sales Corporation and also as agent for another defendant, Graham-White Manufacturing Company, on May 24, 1957. On June 3, 1957 the summons was again served upon Kelly in the same capacities. Thereafter Graham-White Sales Corporation and Kelly, as its president, appearing specially, served and filed an order to show cause why said service should not be quashed and set aside in so far as it purported to confer jurisdiction upon the court over the Graham-White Sales Corporation. Said defendants also applied for suppression of the proposed discovery examination of Kelly in his position as officer or agent and for limitation of such examination as to his individual position. From an order denying the motion to set aside the service and to suppress the adverse examination, defendants Kelly and the Sales Corporation appeal.

The facts will be stated in the opinion.

Martin, C. J. Plaintiff Prime Manufacturing Company is a Wisconsin corporation and it has for many years engaged in the business of selling to railroads sander equipment, solenoid valves, drain valves and bell ringers which it purchased from Graham-White Manufacturing Company of Salem, Virginia under an oral arrangement. For many years prior to March 15, 1957 D. Allcott Kelly was employed by plaintiff as "assistant to the president."

Kelly was in charge of resale of railroad equipment purchased by plaintiff from the Graham-White Manufacturing Company.

Graham-White Sales Corporation was incorporated in Virginia in August, 1956. Kelly was president and a director of the Sales Corporation. By a lease dated August 20, 1956 Kelly and the Sales Corporation rented offices in the Colby-Abbott Building at 759 North Milwaukee Street in Milwaukee. According to its terms the lease was to run from October 1, 1956 to September 30, 1959 with the option to renew for successive three-year periods. Subsequently by agreement the commencement date of the lease was extended to October 15, 1956. Sometime after the first of the year the suite was occupied by personnel and a typewriter and some office furniture and crates were moved in. The president of the office building company testified at the hearing on June 21, 1957 that the furniture was still there up to a couple of days before the hearing and that the rent was being paid and the lease was in full force and effect as of the date he testified.

On February 1, 1957 the Wisconsin Telephone Company installed telephone service for Graham-White Sales Company in the leased premises and made two additional listings, one, if no answer call Woodruff 2-5356 (later corrected to Woodruff 2-2737), and the second, for D. Allcott Kelly. The business address listed was 759 North Milwaukee Street. The Kelly residential listing was Woodruff 2-2737. On March 21st the Telephone Company placed Graham-White Sales Company in the classified list under "Railroad Supplies," and made the listing correction, if no answer call Woodruff 2-2737. On March 25th the listing of the Sales "Company" was

changed to Graham-White Sales Corporation and another listing was added for Graham-White Manufacturing Company. At the hearing on this motion on June 21, 1957 the manager of the Telephone Company testified that the service was still in effect. The Telephone Company records showed five local calls made from these listings (Broadway 6-9520 and 6-9521) in March, 1957; seventy-five such calls in April and forty-seven in May. Its records also showed numerous long distance calls made and received and telegrams sent under these listings during March and April, 1957. On April 22, 1957 the Sales Corporation put in an answering service.

Exhibit F, an advertisement of the Graham-White Sales Corporation for railroad locomotive equipment, published on March 24, 1957, contains the following:

> "Address inquiries to:
> 759 North Milwaukee St.
> Milwaukee 2, Wisconsin
>
> Telephone
> Broadway 6-9520"

The statute involved is:

Sec. 262.09(4) "If the defendant is a foreign corporation (including one created by or under any act of Congress) and (a) is doing business in Wisconsin at the time of service, or (b) the cause of action against it arose out of the doing of business in Wisconsin, service may be made in accordance with the provisions of s. 180.825 or by delivering within or without the state a copy of the summons to any officer, director or managing agent of the corporation."

The question is whether at the time of the service of the summons in this action on D. Allcott Kelly, as president of the Graham-White Sales Corporation—May 24, 1957 or June 3, 1957—the corporation was doing business in Wisconsin.

In the recent case of *Behling v. Wisconsin Hydro Electric Co.* (1957), 275 Wis. 569, 572, 573, 575, N.W. (2d), this court, stating that "Questions of jurisdiction acquired by the service of process on a foreign corporation depend upon whether or not there has been compliance with the due-process provision of the federal constitution," regarded as controlling *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 319, 66 Sup. Ct. 154, 90 L. Ed. 95, where it was said:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due-process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties or relations. Cf., *Pennoyer v. Neff, supra; Minnesota Commercial Assn. v. Benn,* 261 U.S. 140.
>
> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

Since the decision in the *International Shoe Case* the test of "doing business" for purposes of jurisdiction over a foreign corporation has been substantially liberalized so that, as stated in 18 Fletcher, Cyc. Corporations (Perm. Ed.), sec. 8711, p. 389:

> " * * * all that is required is that the foreign corporation have 'certain minimum contacts with the

> forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.' Hence the old cases construing 'doing business' no longer can be considered completely authoritative."

The facts in this case do not warrant any suggestion of "unfair play."

In the *Behling Case, supra* (p. 576), this court applied the rule stated in an annotation in 146 A.L.R. 961, as follows:

> " 'While it is a generally accepted proposition that the fact that an office is maintained in a state for the facilitation of the sales of a foreign corporation, at least in the sense of making it more convenient for its salesmen to solicit orders for outside goods, will not, of itself, make the corporation amenable to service of process, *very little more* is needed, according to the cases, to establish that the corporation is "doing business" within the state, for this purpose. (And some of the courts have indicated that an aggregate of activities, no one of which would in itself be sufficient to subject the corporation to state jurisdiction, may do so, particularly if the volume of corporate business in the state is continuous and substantial, principally upon the authority of *International Harvester Co. v. Kentucky* * * *)' " (Emphasis supplied)

See, also, discussion in 1956 Wisconsin Law Review, 522.

Appellants maintain that all business activities at the Milwaukee office ceased prior to May 15th.

Kelly is president of the Sales Corporation and he resides in Milwaukee. He leased offices in the Sales Corporation's name for a three-year period with option to renew. Office furniture and equipment was moved in.

The space was occupied and used by him and by Stella Peplowski, who was his secretary and close associate while both were employed by the plaintiff. Two telephone lines and four business listings were maintained and used at this office by the Sales Corporation. There is no showing that it attempted to close the office or discontinue the telephone service; both the lease and the telephone service were in effect at the time of the hearing.

In 17 Fletcher, Cyc. Corporations (Perm. Ed.), sec. 8487, p. 529, it is noted that while a foreign corporation is not necessarily doing business in the state because it secures a lease of a building there,—

> "Of course, the foreign corporation would be doing business in the state where it actually uses the leased premises in its regular corporate business. * * *"

The trial court was justified under the testimony produced at the hearing in finding that the offices were in use by the Sales Corporation. The fact that it did little business is of no concern. Under the decision in *Petition of Northfield Iron Co.* (1938), 226 Wis. 487, 277 N.W. 168, the test of "continuous activity" can be met by showing that a continuous course of business was contemplated, even though little activity had taken place. The Sales Corporation was ready to accept, and had equipped and manned itself so that it could accept, and act upon, any order or business which might come into the office.

So far as the installation of a telephone answering service is concerned, the trial court correctly observed that the use of such a service is not indicative of an intention to abandon the office or the business, but is consistent with the continuation of the business. It is not denied that the advertisement, Exhibit F, was a publication "to the trade,"

as alleged in the affidavit of plaintiff's secretary; the advertisement directs that all inquiries be addressed to the Milwaukee office. There is no evidence of any publication to the trade advising that the Milwaukee office is closed and that inquiries should be addressed elsewhere. Kelly admits in one of his affidavits that he used the office and the telephone service in handling inquiries addressed there.

These activities constitute at least the "very little more" than the maintenance of an office for convenience in the solicitation of orders, required under the rule, and the trial court was warranted in holding that the Sales Corporation was amenable to service in Wisconsin on May 24 and June 3, 1957.

By the Court. Order affirmed.

OPINION OF TRIAL COURT

(Caption omitted)

A summons together with discovery pleadings were served on Kelly, according to one Anton's affidavit, on May 24, 1957; this purported to be service on Kelly as an individual, as president of the Graham-White Sales Corporation and also as agent for Graham-White Manufacturing Company. For reasons which are not disclosed, the summons was again served on June 3, 1957, by one Zaidins, upon Kelly in the two alleged representative capacities.

There are thus on file two separate purported services upon the Graham-White Sales Corporation and the Graham-White Manufacturing Company, but no evidence of service on Lilian B. Kelly, Virgil L. Frantz, Sr., Stella Peplowski, or Betty F. Roberts.

Challenge to the jurisdiction is made via special appearance by the Graham-White Sales Corporation and the Graham-White Manufacturing Company. There is also an application for suppression of the proposed discovery examination of Kelly in his position as officer or agent and also the limiting of such examination as to his individual position.

I. The Special Appearances

The special appearance of the Graham-White Sales Corporation must be overruled; the special appearance of Frantz and Roberts doing business as Graham-White Manufacturing Company must be sustained.

The Graham-White Sales Corporation was, in my opinion, "doing business" in Wisconsin within the meaning of section 262.09(4). It is clear that the president of the Graham-White Sales Corporation was personally served within this state; we are not dealing with the case of service upon a minor sales representative or a subordinate official. It is also reasonably clear that the corporation over which Kelly presided was engaging in enough business activity in this state at the time of the two services to warrant the reasonable conclusion that it was exposing itself to the jurisdiction of this state. The creation of a base of operations in a leased office, the installation and actual use of phone service and the advertising of the corporation's presence strongly suggest its availability for commercial activity in Milwaukee.

Although Exhibit F to the Vaughn affidavit is averred to have been circulated "to the trade" on information and belief, the face of that exhibit shows that Milwaukee was the place to which business inquiries were to be sent. This averment has not been contradicted by the

defendants. One of the Kelly affidavits states that if any inquiries were received at the Milwaukee office, he supplied information; but if anyone wanted to place an order, he directed them to be sent to the home office in Virginia. I find it difficult to interpret this to mean that the president of this newly-created corporation failed to engage in enthusiastic sales work, but, rather, referred the prospective purchaser to the Virginia office. This would scarcely be expected or reasonable for a man who for much of the previous thirty years had been in sales work.

Counsel for Graham-White Sales Corporation argue that the company was not doing business at the time of service, having only a barren obligation to pay rent on the leased premises after May 15, 1957. The record fails to support this position. There was no effort to close the office or end the lease. The hiring of a telephone answering service does not show an intention to abandon the office or the doing of business; on the contrary, it is consistent with the preservation and continuation of the business.

Under the applicable rules of law, the defendant Graham-White Sales Corporation was amenable to service in Wisconsin on May 24, and June 3, 1957. *International Shoe Co. v. State of Washington* (1945), 326 U.S. 310; *Fond du Lac Cheese & Butter Co. v. Henningsen Produce Co.* (1909), 141 Wis. 70, 73; *Behling v. Wis. Hydro-Electric Co.* (1957), 275 Wis. 569.

The special appearance of the co-partners is well-taken. There is not an adequate showing that the Graham-White Manufacturing Company had engaged Kelly as their agent. The contract between the two firms which is annexed to the affidavit of Frantz does not warrant the conclusion that an officer of the Graham-White Sales Cor-

poration is an agent for purposes of service of the Graham-White Manufacturing Company. Since neither the partners themselves nor an appropriate agent was served with process, there is no basis for jurisdiction over the co-partners. The partnership, as an entity, is not amenable to service. *Ausen v. Moriarity* (1954), 268 Wis. 167, 173.

II. Limitation of Discovery

The discovery demands attached to the summons are broad in their scope, but they are consonant with the objects of the action delineated in the affidavit accompanying the summons and appear relevant thereto.

There has been no showing by any of the defendants that the proposed examination of Kelly is not reasonably within the contemplation of section 326.12.

Plaintiff's counsel may present an appropriate order for signature. The proposed order shall be exhibited to defendants' counsel at least three days before its submission to the court.

/s/ Myron L. Gordon
Circuit Judge

Dated at Milwaukee, Wisconsin, this 15th day of August, 1957.